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Michelle Mebane
Michelle Mebane

ATTACHMENT G

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
DEC 11 '90
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE
SECRETARY

In re Applications of	)	MM DOCKET NO. 89-311
)	
MARC A. ALBERT	)	File No. BPH-870918MC
)	
TAYLOR COMMUNICATIONS OF SYRACUSE, INC.	)	File No. BPH-870918ML
)	
SALT CITY COMMUNICATIONS, INC.	)	File No. BPH-870918MN
)	
HUSTON TELECOM, INC.	)	File No. BPH-870918MX
)	
D.J.'S BROADCASTING CO.	)	File No. BPH-870918MY
)	
For a Construction Permit)	
for a New FM Station)	
Syracuse, New York)	

To: Chief Administrative Law Judge
Joseph Stirmer

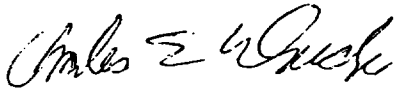
MASS MEDIA BUREAU'S INFORMATION STATEMENT

1. On December 4, 1990, the Mass Media Bureau filed the attached pleading in MM Docket No. 88-358, the Beaumont, Texas proceeding. There, we supported the conditional grant of an FM construction permit, notwithstanding the issuance of a determination of air hazard by the Federal Aviation Administration ("FAA"), when the FAA's objection was based solely on the perceived potential for electromagnetic interference.

2. To the extent that one or more of the above-captioned

applications may be similarly situated, the Bureau's views may be relevant to the instant proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Federal Communications Commission

December 11, 1990

ATTACHMENT H

DEC 4 - 1990

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of	)	MM DOCKET NO. 88-358
)	
TEXAS COMMUNICATIONS LIMITED)	
PARTNERSHIP)	
)	
<u>et al.</u>)	
)	
For a Construction Permit for a)	
New FM Station)	
Beaumont, Texas)	

To: The Review Board

MASS MEDIA BUREAU'S OPPOSITION TO PETITION FOR RECONSIDERATION

1. On November 19, 1990, Texas Communications Limited Partnership ("Texas Ltd.") filed a Petition seeking reconsideration of the Review Board's Decision in the above captioned proceeding (FCC 90R-90, released October 17, 1990) (hereinafter "Decision"). The Decision granted the application of Beaumont Skywave, Inc. ("Skywave"), with the following condition:

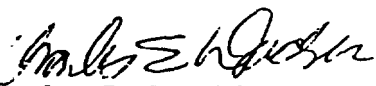
Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

2. The Federal Aviation Administration ("FAA") has notified each of the applicants in the above-captioned proceeding that their proposals would constitute hazards to air navigation because of the potential for electromagnetic interference ("EMI") to the FAA's instrument landing system. As the Decision correctly noted, the Bureau has urged the grant of applications, with the above-stated condition, when a determination of air hazard is based solely on EMI. Indeed, this was the Bureau's position when the Initial Decision in the above-captioned proceeding was released. See Initial Decision of Administrative Law Judge Edward J. Kuhlmann, 5 FCC Red 1592 (1990). As Texas Ltd. notes, as a result of negotiations with the FAA, the Bureau recently adopted a policy of supporting grants of applications only when FAA approval has been obtained.

3. However, at this time the Bureau cannot, in good faith, urge further delays based on the status of the negotiations. Accordingly, the

Bureau urges that the Review Board reject the petition, inasmuch as it deals with the EMI question, and affirm the conditioned grant.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Federal Communications Commission

December 4, 1990

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 4th day of December, 1990, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Petition for Reconsideration" to:

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Michelle C. Mebane
Michelle C. Mebane

ATTACHMENT I

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88M-2420

4974

In re Applications of	)	MM Docket No. 88-17
)	
DONALD E. HILGENDORF	)	File No. BPH-861020TA
)	
TRAN BROADCASTING CORPORATION	)	File No. BPH-861020TB
INCORPORATED)	
)	
For Construction Permit)	
for a New FM Station)	
Brookfield, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Issued: July 25, 1988 ; Released: July 27, 1988

1. At hand is a Petition to Enlarge Issues, filed June 15, 1988 by Donald E. Hilgendorf (Hilgendorf), seeking an additional issue against Tran Broadcasting Corporation, Incorporated (Tran). Tran filed an Opposition on July 7, 1988. The Chief, Mass Media Bureau (Bureau), filed an Opposition on July 15, 1988 and Hilgendorf filed a Reply on July 15, 1988.

2. Briefly, Hilgendorf urges the addition of a site availability issue against Tran premised "on the basis of the recent FAA disapproval of Tran's proposed tower construction." Hilgendorf states that the "FAA has, in fact, explicitly cancelled Tran's previous determination of no hazard . . ." In Memorandum Opinion and Order, FCC 88M-1669, released May 31, 1988, Hilgendorf notes a similar issue was added against him; that "Tran's situation is no different."

3. The Bureau in its Opposition states that the FAA's cancellation of its earlier favorable Determination "is based solely upon the FAA's opinion that Tran's proposal would cause adverse electromagnetic interference (EMI) to aircraft instrumentation in the area." The Bureau requested in its Motion to Defer Ruling an opportunity to review the responsive pleadings and conduct an analysis; that review convinces the Bureau that an air hazard issue is not required; and inasmuch as "potential interference alone, and not antenna height," is involved "a condition upon a grant to the applicant should resolve the objections." Finally, the Bureau relates that it considers it "a reasonable assumption" since the physical structure was not the stated basis for the FAA cancellation rather "a very slight change in the location," the condition it suggests should suffice, a condition "Tran agrees to accept."

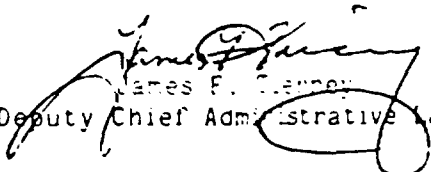
4. Hilgendorf's Reply noting that "Tran does a lot of fancy footwork" to avoid imposition of an issue, states none of Tran's arguments overcomes the fact that Tran has no FAA approval; that its Petition was not, as charged, untimely, Tran having formally reported not in April but on May 18, 1988. "The fact that the FCC and the FAA do not see eye to eye on the question of who should evaluate the EMI is no reason not to add an issue against Tran," Hilgendorf adds; it, too, "is having a similar EMI problem with the FAA . . . [t]he FAA issue specified against Hilgendorf does not restrict inquiry to the height question to the exclusion of the EMI question."

5. Both Tran and the Bureau are more persuasive of the question at bar. Passing over Tran's notion that the FAA's April 1988 Determination "is of questionable legal validity, to say the least," the fact that FAA has not objected to the Tran proposed tower height, unlike the Hilgendorf application, as Tran argues, "[t]his difference justifies the addition of the issue against Hilgendorf, but not against Tran." Were the FAA's position identical in both the Tran and Hilgendorf cases, a caveat or condition to the grant of the successful applicant would adequately meet and resolve the question. Hilgendorf, unlike Tran, bears a heavier burden or obstacle, which an imposed condition could not resolve.

Accordingly, the instant Petition to Enlarge must be AND IS
HEREBY DENIED.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION


James F. Flannery
Deputy Chief Administrative Law Judge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2553

In re Applications of	)	MM Docket No. 88-17	000352
)		
DONALD E. HILGENDORF	)	File No. BPH-861020TA	
)		
TRAN BROADCASTING CORPORATION	)	File No. BPH-861020TB	
INCORPORATED)		
)		
For Construction Permit)		
for a New FM Station)		
Brookfield, Wisconsin)		

MEMORANDUM OPINION AND ORDER

Issued: October 26, 1989 ; Released: October 30, 1989

1. At hand is a Motion for Immediate Grant of Application, filed October 13, 1989 by Tran Broadcasting Corporation, Incorporated (Tran). The Chief, Mass Media Bureau (Bureau) filed "Comments" on October 24, 1989.

2. Briefly, Tran relates that counsel for Donald E. Hilgendorf (Hilgendorf) stated on the record of the hearing, October 10, 1989, that Hilgendorf declined further to prosecute his application and was withdrawing from further participation in this proceeding; that as the sole remaining qualified applicant, the public interest would be served by an immediate grant of the Tran application.

3. On October 18, 1989, Tran's principal filed the requisite verification that his application was not filed for the purpose of reaching or carrying out a settlement. Also, on the record, Hilgendorf's counsel affirmatively represented that the action of his client in no longer wishing to pursue prosecution of his application was an independent act, and that his application was not filed for the purpose of reaching a settlement (Tr. 230-231).

4. The Bureau in its "Comments," principally in support, urges that a grant to the surviving qualified applicant, Tran, must be conditioned because of the Federal Aviation Administration's (FAA) position that Tran's proposal could cause adverse electromagnetic interference to aircraft instrumentation in the area, citing Mass Media Bureau's Opposition to Petition to Enlarge filed July 15 1988. The Bureau's position on that point is persuasive and is adopted.

5. In all other respects, Tran, as the surviving applicant, appears fully qualified to warrant favorable disposition of its Motion.

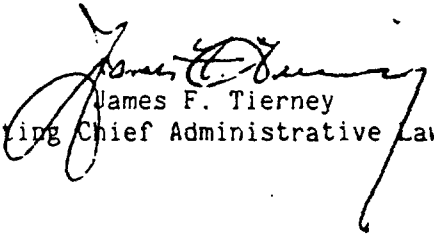
Accordingly, and to memorialize the disposition on the record, the application of Donald E. Hilgendorf for the captioned facilities at Brookfield, Wisconsin IS DISMISSED, with prejudice. That being done, the application of Tran Broadcasting Corporation, Incorporated for those same facilities IS GRANTED, with the imposition of the following condition:

Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

Nothing further remaining to be determined, this proceeding IS TERMINATED.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION


James F. Tierney
Acting Chief Administrative Law Judge

ATTACHMENT J

APR 17 1989

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-1162

Addressed to ~~In re Applications of~~

MM DOCKET NO. 88-364 9623

Handled by ~~ADLAI E.~~
~~STEVENSON IV~~

File No. BPH-870909MK

W. H. H. H.
L. H. H. H.
Louise B. Toft and
Stuart A. Toft d/b/a
ALLIANCE
BROADCASTING OF CHAMPAIGN COUNTY

File No. BPH-870910MT

For a Construction Permit
For a New FM Station on
Channel 290A in
Mahomet, Illinois

MEMORANDUM OPINION AND ORDER

Issued: April 11, 1989

Released: April 13, 1989

1. Adlai E. Stevenson, IV (Stevenson) seeks a ruling on a Petition for Leave to Amend. He filed his petition on March 28, 1989. The Mass Media Bureau filed comments supporting a grant of Stevenson's amendment on April 6, 1989. So it stands unopposed.¹

2. Stevenson wants to report two things. First he reports that the FAA has restudied his proposed transmission facility and has found that a potential for electromagnetic interference (EMI) to air navigation radio exists. This has caused the FAA to reverse its previous determination that Stevenson's proposal would not constitute a hazard to air navigation. See Exhibit No. 2 attached to Stevenson's petition.

3. Secondly, Stevenson addresses this turn of events. He indicates that if he is the successful applicant in this case he will accept the following condition on his grant:

"Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate

¹ Any comments on or opposition to Stevenson's petition were due on or before April 6, 1989. The FAA is a party to this proceeding. See 53 F.R. 32600 published August 26, 1988, para. 9. They filed nothing.

corrective action as is necessary to eliminate the harmful interference. This condition expires after one-year of interference-free operation."

Ruling

4. Stevenson's unopposed petition will be granted, and his amendment accepted. He has shown good cause for amending. The Presiding Officer can't understand why the FAA will issue a no-hazard determination for a proposed transmitter, and a short time later (without any intervening events) rescind that determination. Did the FAA misprocess the first application for clearance, or is it misprocessing it now? For an agency charged with the safety of the airplanes to proceed in such a manner is eerie, to say the least.

SO the Petition for Leave to Amend that Adlai E. Stevenson, IV filed on March 28, 1989, IS GRANTED; the accompanying amendment IS ACCEPTED; and if BPH-870909MK is granted, the condition set out in para. 3 supra., WILL ATTACH.

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller

Walter C. Miller
Administrative Law Judge

ATTACHMENT K

CORRECTED COPY

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

OE Docket Number 89-AWA-OE-63

Anne M. Counihan
Pelican Rapids, Minnesota

REVIEW AND REVERSAL OF
DETERMINATION OF HAZARD TO AIR NAVIGATION

The Federal Aviation Administration's (FAA) Great Lakes Region issued a Determination of Hazard to Air Navigation under Aeronautical Study Number 88-AGL-338-OE November 7, 1989. The determination concerned a proposal by Ms Anne M. Counihan to construct an antenna tower 215 feet above ground level, 1262 feet above mean sea level, location at latitude 44° 55' 20" N., and longitude 93° 28' 08" W., near Pelican Rapids, Minnesota, operating on frequency 105.7MHz, with a power output of 3kw.

On November 13, 1989, A. Wray Fitch, counsel for Ms. Counihan, petitioned FAA headquarters for discretionary review of the hazard determination. The petition was based, in part, on the fact that on September 8, 1988, the FAA had issued an Acknowledgment of Notice of Proposed Construction or Alteration that had stated that the agency had no problem with the proposal. That acknowledgment was followed by a letter terminating the former on October 13, 1989, due to application of a new computer model used by the FAA for predicting electromagnetic interference (EMI). Thus, the standard utilized by the FAA had changed, not the proposal itself, it was therefore not reasonable vis a vis

CORRECTED COPY

this proponent to apply a new or different assessment model.

At the time of the aeronautical study that led to the initial decision, the FAA was using the Venn Diagram to predict EMI from FM stations. Subsequent to that date the agency discontinued use of the Venn Diagram and began using the Airspace Analysis Model (AAM).

As a result of this review it has been determined that the Great Lakes Region properly applied both assessment tools and reached the appropriate decision in each case.

The findings of this review are based on FAA policy in the assessment of EMI impacts on air navigation and communication aids from commercial broadcast sources. Since the filing of the above referenced petition, other proposals under near identical circumstances have come to the attention of the agency. This led to a review by the FAA regarding the appropriate application of the two models. The agency has determined that under certain circumstances when the Venn Diagram had already been applied and agency approval given but was subsequently reversed due to application of the AAM, conditional no hazard determinations may be issued during this period of transition.

In such cases, when public notice has been given and public comments resolved, or if notice is not required due to the nature of the proposal, it is the further intent of the FAA to grant

review with an immediate reversal. In the instant case, notice is not required due to the nature of the proposed structure.

Based on this discretionary review, it is the finding of the FAA that the proposed structure would have no substantial adverse effect on the safe and efficient utilization of navigable airspace by aircraft or on the operation of air navigation facilities, and therefore, would not be a hazard to air navigation provided the following conditions are met:

1. The following statement is included on the proponent's construction permit and/or license to radiate:

Conditional Statement

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after 1 year of interference-free operation.

2. If temporary construction equipment is used during the actual construction of the proposed tower and that equipment has a height that would exceed the notice standards of the Federal Aviation Regulations (FAR) Part 77, notice is submitted to the FAA's Great Lakes Region, Des Plaines, Illinois.
3. This decision is based solely on the foregoing description of the structure which includes location, height, ERP, and

operating frequency. Notice needs to be given for any future construction or alteration that would exceed the above described height, increase the ERP, alter the transmitting frequency, and/or add other transmitting device(s). Compliance with this condition is in accordance with Section 77.13(a)(4) of the FAR.

4. The construction sponsor files supplemental notice with the FAA's Great Lakes Region, Des Plaines, Illinois, at the time the project is abandoned, or at least 48 hours before the start of construction, and 5 days after the structure reaches its greatest height.

5. The structure is marked and lighted in accordance with FAA Advisory Circular 70/7460-1G, Obstruction Marking and Lighting Chapters 3, 4, 5, and 9.

This decision concerns the effect of the proposed structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local governmental body.

This determination expires on DEC 10 1990 unless an application for a construction permit is made to the Federal Communications Commission (FCC) on or before the above expiration date., In such case the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies

the application.

There, pursuant to the authority delegated to me by the Administrator, the Determination of Hazard to Air Navigation issued by the Great Lakes Region under Aeronautical Study Number 88-AGL-338-OE is reversed. This Determination of No Hazard to Air Navigation is final and effective upon issuance.

Issued in Washington, D.C., on JUN 8 1990

Harold W Beecher

CERTIFICATE OF SERVICE

I, Lisa M. Volpe, a legal assistant in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 11th day of March, 1991, copies of the foregoing were mailed to the following:

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